

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTEENTH REGION

Omaha, Nebraska

US FOODSERVICE, INC.1/

Employer

and

STEVEN PAUL KURCZ

Petitioner

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL NO. 554, AFL-CIO

Union

Case 17-RD-1652

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.2/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 3/

All full-time and regular part-time drivers and warehousemen including warehouse employees, receiving clerks, freezer employees, straight truck drivers, tractor-trailer drivers, utility drivers and special rate drivers employed by the Employer at its Omaha, Nebraska facility, but excluding office clerical employees, casual employees, guards, professional employees, supervisors within the meaning of the Act, and all other employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

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engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 554, AFL-CIO

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned/Officer-in-Charge of the Subregion who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 8600 Farley Street - Suite 100, Overland Park, Kansas 66212-4677 on or before **October 30, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **November 13, 2002**.

Dated October 30, 2002

at Overland Park, Kansas

Regional Director, Region 17

- 1/ The Employer's name appears as amended at the hearing.
- 2/ The Employer is a Delaware corporation with an office and place of business in Omaha, Nebraska, where it is engaged in the business of wholesale food distribution. The Employer employs approximately 42 employees in the collective-bargaining unit. The bargaining unit employees are currently represented by the International Brotherhood of Teamsters, Local No. 554, AFL-CIO. The Employer and the Union are parties to a collective-bargaining agreement, which is effective by its terms through December 7, 2002.
- 3/ The Petitioner is employed by the Employer at its Omaha, Nebraska facility. He seeks an election to determine whether the Union continues to represent the bargaining unit employees. The Union contends that the petition is defective and must be dismissed because the Petitioner failed to provide a unit description on the face of the petition. I find, for the reasons set forth below, that the petition is legally sufficient and I shall direct an election.

STIPULATIONS

The parties stipulated that the following individuals possess the authority to hire, fire, and effectively recommend discipline, and possess other indicia of supervisory status within the meaning of Section 2(11) of the Act:

Jeff Murray	-	Vice President of Finance
Kim Burmeister	-	Vice President of Human Resources
Bob Logan	-	Vice President of Procurement
Jim Waggoner	-	Vice President of Sales
Dirk Day	-	Vice President of Operations
Tom O'Neill	-	Day Shift Supervisor
Jason McKewan	-	Mid Shift Supervisor

Joe Baratta	-	Night Warehouse Supervisor
Patrick Carroll	-	Transportation Manager
James Sears	-	Transportation Supervisor

Accordingly, the above-named individuals are excluded from the unit as statutory supervisors.

The parties also stipulated that, in the event an election is directed, the unit should include all full-time and regular part-time warehouse employees, receiving clerks, freezer employees, straight truck drivers, tractor-trailer drivers, utility drivers and special rate drivers.

FACTS

On December 8, 1997, the Union entered into a collective-bargaining agreement with K.B. Foods, Inc., the Employer's predecessor. That agreement, at Article II, Section 1, contains the following recognition language:

The Employer recognizes the Union as the bargaining representative for all drivers and warehousemen located in Omaha, Nebraska, and specifically excludes office clerical employees, casual employees, guards, professional employees and supervisors within the meaning of the Act as amended and all other employees.

The agreement was set by its terms to expire on December 7, 2000.

Prior to the expiration of the agreement, in about February 1998, Alliant Foodservice purchased K.B. Foods. Alliant assumed K.B. Foods's collective-bargaining obligation with the Union, and, on about March 8, 1998, entered into a "Letter of Understanding" with the Union. The Letter of Understanding operated as an amendment to the collective-bargaining agreement between K.B. Foods and the Union. This amendment served to extend the contract by two years, through December 7, 2002, establish wage rates for employees in the bargaining unit, and create a new pay classification entitled "Special Driver Rate." The Special Driver Rate applied to drivers who had been employees of Alliant prior to the acquisition of K.B. Foods and operated to

equalize pay of the K.B. Foods drivers and the Alliant drivers. The special driver classification also served the function of dovetailing the drivers of the newly merged company. As of December 8, 2001, this classification was moot as pay between drivers had become equalized.

In about December 2001, the Employer purchased Alliant. The Employer recognized the Union, adopted the collective-bargaining agreement and Letter of Understanding, and assumed Alliant's bargaining obligation with the Union.

On October 4, 2002, the Petitioner filed the decertification petition in this case. He filed the petition within the appropriate window period prior to the expiration of the collective-bargaining agreement.¹ On the face of the petition, the Petitioner named the Employer as U.S. Foodservice, and the Union as Teamsters Local No. 554.² In addition, the Petitioner asserts in the petition that the approximate number of employees in the collective-bargaining unit is 40, and that he is a driver in that unit. The Petitioner failed, however, to provide a unit description on the face of the petition as required by Section 102.61(c)(2) of the Board's Rules and Regulations. Based on this omission, the Union claims that the Board may not proceed to a decertification election.

ANALYSIS

I find that the Union's argument lacks merit. While it is true that the Petitioner did not specifically set out the unit in the petition, he provided enough information on the face of the petition to accurately identify the unit in question. Thus, the Petitioner provided the names of

¹ In its brief, the Union anticipated that an argument would be raised that the Petitioner could file the petition or an amendment at any time because the original contract dates back to 1997. The Union argues that the assumption of the bargaining obligation by the Employer created a new contract period and, therefore, contract bar rules apply. As the Petitioner filed the petition in the appropriate time frame, I find that there is no contract bar to processing the petition.

² In its brief, the Union argues that the Petitioner erroneously named the Union as Teamsters Local 541. The Union's argument is misplaced as the petition clearly states Teamsters Local No. 554.

both the Employer and the Union. There is only one collective-bargaining unit at the Omaha facility, and the Union represents only that unit. Further, that unit is clearly described in the collective-bargaining agreement and Letter of Understanding entered into between the Employer and the Union, and referenced in the petition. (The Petitioner notes on the face of the petition that a collective-bargaining agreement exists and that it is set to expire on December 7, 2002.)

As the Board has held that “decertification elections are held in units coextensive with the contract units,” naming the Employer and the Union in combination with the reference to their collective-bargaining agreement leaves no doubt as to the unit covered by the petition.³ Arlan’s Department Store of Michigan, Inc., 131 NLRB 565, 567 fn. 7 (1961). In addition, the Petitioner set forth an approximate number of 40 unit employees on the face of the petition. The Union’s witness testified at the hearing that there are 42 employees in the unit in question.⁴ In these circumstances, no party will be prejudiced if the Board proceeds to an election in the unit as defined in the collective-bargaining agreement. I find that there was enough information on the face of the petition to accurately ascertain the unit involved and, therefore, I find that the petition is not defective. Accordingly, I shall direct an election in the petitioned-for warehouse and driver unit.

Finally, the Union argues that any amendment to the petition would be untimely under Deluxe Metal Furniture Co., 121 NLRB 995 (1958) and Brown Transport Corporation, 296

³ In its brief, the Union claims that it cannot discern what the appropriate unit would be: the K.B. unit, the Alliant unit or the US Foodservice unit. The Union’s claim is unfounded as all of those units are the same. They all compromise the unit recognized in the collective-bargaining agreement at Article II, Section 1. The Letter of Understanding does not change the scope of the contractual unit.

⁴ The Union argues that there may be a decrease in the unit within the next 30 to 60 days. The testimony on this issue was sheer conjecture as to what might happen if the Employer lost a customer. There was no evidence that the Employer was, in fact, going to lose a customer. I find that the Union’s argument about unit contraction is merely speculative, and does not affect the decision to further process the petition. Further, contrary to the Union, I find that the Hearing Officer did not err in not obtaining evidence as to a cutoff date for voter eligibility.

NLRB 1213 (1989). As no amendment to the petition has been offered, it is unnecessary to address the Union's argument.

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